

REVERSION OR SALE OF PROPERTY WHEN USE IS ABANDONED

for the Eminent Domain Subcommittee of the Environmental Quality Council
by Krista Lee, Resource Policy Analyst

Occasionally, property that was obtained for a public purpose through the use of eminent domain is abandoned or the public purpose for which it was acquired is terminated. There are two statutes under the eminent domain law that address the reversion or sale of the property. These two sections are 70-30-321, MCA and 70-30-322, MCA. The Montana Department of Transportation (DOT) has a different method for the reversion or sale of property which is outlined in 60-4-201, MCA through 60-4-205, MCA.

Initially, this paper discusses the requirements that must be met by all entities, other than the DOT, when the property is abandoned or sold. A section at the end of the document addresses the DOT's responsibilities when property it has obtained is no longer necessary or used.

The process, outlined in statute, for the reversion or sale of property that was obtained through condemnation actions, depends upon the type of interest taken -- fee simple title or another form such as easement or right-of-way.

SALE OF PROPERTY

Fee Simple Title Interest

If the interest obtained in the property was fee simple title, the seller may sell the interest to the highest bidder. In the event that the seller chooses to sell the property to the highest bidder, the seller must publish notice of the public sale in a newspaper published in the county in which the real interest in property is located. This notice must be published once per week for 4 consecutive weeks. The sale of the property must occur in the county where the property is located.

Interest Other Than Fee Simple Title

When an interest other than fee simple title was obtained in the property, the property reverts to the original owner or his successor in interest.

OPTION OF ORIGINAL OWNER OR SUCCESSOR IN INTEREST TO PURCHASE AT SALE PRICE

Fee Simple Title Interest

The owner, or successor in interest, from which the original real property interest was originally acquired must be notified by the seller that the property has been sold. The original owner or successor in interest has a 30-day option from the date of a sale to purchase the interest. This purchase price must be equal to the amount of the highest bid received for the interest in property at the sale. However, if more than one person claims an equal entitlement to the interest in property, the option may not be exercised.

If no bids are received for the interest in property and the option holder indicates in writing that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the option holder.

Interest Other Than Fee Simple Title

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THE MONTANA DEPARTMENT OF TRANSPORTATION (DOT) RESPONSIBILITIES

The DOT responsibilities in regards to the abandonment of property that is taken through condemnation and the resale or reversion of that property is slightly different than the responsibilities of other entities.

Section 60-4-204, MCA, was repealed by the 1995 Legislature. As a little bit of background information, 60-4-204, MCA provided the same process for the sale of property obtained through condemnation as is currently outlined in the eminent domain statutes. With the repealing of 60-4-204, MCA, in cases where the interest taken in property was fee simple title, the DOT is no longer required to allow the original property owner or successor in interest an option to purchase the interest at the sale price. Section 60-4-201, MCA through Section 60-4-205, MCA, outline the current process which must be followed by the DOT.

In general, the DOT is required to sell any land valued in excess of \$2,500.00 at public auction. The only difference between DOT's requirements and others governed by the eminent domain laws is that in the DOT process, the original landowner or successor in interest doesn't have the option of meeting the sale price.

Each of the 4 statutes governing the DOT's process is provided below.

60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. It may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) The owner from whom the interest was originally acquired by the state or his successor in interest has the right to require the department to offer the land for sale in the manner set forth in 60-4-202 and 60-4-203. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered or certified mail to the department within 10 days after receipt of notice from the department.

History: En. Sec. 8-109, Ch. 197, L. 1965; amd. Sec. 132, Ch. 316, L. 1974; R.C.M. 1947, 32-3909.

Cross References:

Power to sell, lease, or exchange certain state lands, 77-1-204.

60-4-202. Sale of interest in real property. The department may sell an interest in real property if the department determines that the property is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of \$2,500, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted as provided in 77-2-321.

History: En. Sec. 8-110, Ch. 197, L. 1965; amd. Sec. 133, Ch. 316, L. 1974; R.C.M. 1947, 32-3910; amd. Sec. 1, Ch. 305, L. 1981; amd. Sec. 1, Ch. 232, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 232 in first sentence, after "real property", deleted "however

acquired by it", in second sentence increased amount to "\$2,500" from "\$100", and in last sentence inserted "of an interest at auction"; and made minor changes in style.

1981 Amendment: Deleted "or by sealed bids as the department decides" after "public auction" in the second sentence; substituted "77-2-321" for "60-4-203" in the last sentence.

60-4-203. Conduct of sale. (1) The department shall publish notice of the sale once a week for 4 successive weeks in a newspaper published in the county in which the interest is located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) Before the sale of an interest having a value in excess of \$2,500, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-111, Ch. 197, L. 1965; amd. Sec. 1, Ch. 21, L. 1974; amd. Sec. 134, Ch. 316, L. 1974; R.C.M. 1947, 32-3911; amd. Sec. 20, Ch. 23, L. 1979; amd. Sec. 2, Ch. 305, L. 1981; amd. Sec. 2, Ch. 232, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 232 in (2) increased amount to "\$2,500" from "\$100"; and made minor changes in style.

1981 Amendment: Increased the publication period in (1) from 2 to 4 weeks; inserted the second sentence in (1) referencing required information in the notice of sale; deleted "unless the department finds it impractical, in which case the sale shall be held at the office of the department" at the end of (1).

Cross References:

Transfer of real property, Title 70, ch. 20.

60-4-204. Repealed. Sec. 3, Ch. 232, L. 1995.

History: En. Sec. 8-112, Ch. 197, L. 1965; amd. Sec. 135, Ch. 316, L. 1974; R.C.M. 1947, 32-3912.

60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner or his successor in interest, it may at any time thereafter sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-113, Ch. 197, L. 1965; amd. Sec. 136, Ch. 316, L. 1974; R.C.M. 1947, 32-3913; amd. Sec. 21, Ch. 23, L. 1979.

Cross References:

Effect of transfer, Title 70, ch. 20, part 3.